**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**Civil Writ Petition No.828 of 2001.**
**Judgment Reserved on: March 23, 2007.**
**Date of decision:03.04.2007.**

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**Guru Dutt** ……**Petitioner**

**Versus**

**Union of India & Others** ……**Respondents.**

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*Coram*

**The Hon'ble Mr.Justice Dev Darshan Sud,J.**

*Whether approved for reporting ?*[1]

**For the Petitioner:** **Mr.Rajiv Sharma, Senior Advocate with Mr.Surinder Sharma, Advocate.**

**For the Respondents:** **Ms.Shilpa Sood, Central Government Counsel.**

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**Dev Darshan Sud,J.**

This writ petition has been filed by the petitioner challenging the order dated 30th September, 1999, Annexure-PH, whereby the petitioner has been awarded the punishment of dismissal from service and the period of suspension of the petitioner from 14.08.1999 to 30.09.1999 has been ordered to be treated as dies-non for all purposes; the appellate order Annexure-PJ, dismissing the appeal preferred by the petitioner and the revisional order Annexure-PG dated 12th May, 2000 dismissing the revision petition preferred by the petitioner against the rejection of his appeal.

Brief facts of the case relevant for the decision may be noticed. The petitioner was serving with the Central Industrial Security Force. He was served with

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[1] *Whether the reporters of Local Papers may be allowed to see the judgement*?

a Memorandum of charges dated 16th August, 1999 (Annexure-PA) stating that while the petitioner was on `General' shift duty of striking reserve, he was (a) found in drunk and in a semi-conscious state at about 1320 hrs. on 12.8.1999; (b)he visited an area declared to be `out of bounds' for the personnel of the Force and (c)he left the Unit lines without any permission from the competent authority. These acts, according to the Disciplinary Authority, constituted gross acts of in-discipline on the part of the petitioner for which an enquiry was proposed to be held in accordance with law. In reply, vide Annexure-PE, the petitioner denied all the charges. During the course of the inquiry, the petitioner submitted that his state of semi consciousness had been brought about by chewing `Zarda' which had aggravated his medical condition. At the relevant time, the petitioner was posted at Jorhat in Assam and detailed for duty at the ONGC Unit. After regular inquiry, the petitioner was ordered to be dismissed from service. During the course of the inquiry, the petitioner had not cross-examined any of the witnesses who had been produced by the department. The petitioner preferred an appeal against the order of dismissal which was rejected and thereafter, ***CWP No.725 of 2000*** was filed by him in this Court. By order dated 27th September, 2000, this Court had granted leave to the petitioner to file revision petition against the appellate order. The operative part of the order reads:-

> *"In the facts and circumstances of the case, in our opinion, it would be*

> *appropriate, if liberty is granted to the petitioner to approach revisional authority under sub-section (3) of Section 9 read with sub-rule(1) of Rule 49. If such a revision application is filed within four weeks from today, the revisional authority will consider the same and dispose it of on its own merits, as expeditiously as possible.*
>
> We may state that we are disposing the petition only on the ground of alternative remedy and not on merits and, hence, the revisional authority will decide the revision application, on its own merits, without being inhibited by the observations made hereinabove. In the facts and circumstances of the case, there will be no order as to costs".

After the dismissal of the revision petition, the petitioner again approached this Court by way of the present petition.

In reply to the writ petition the respondents have taken a preliminary objection that this Court has no territorial jurisdiction as the acts of indiscipline, the orders of the disciplinary authority, appellate authority and revisional authority, have not been passed within the territorial jurisdiction of this Court. It has been submitted that the petitioner was posted at Jorhat, where the alleged misconduct was committed by him, the order of the disciplinary authority and the charge sheet was prepared and served on the petitioner at Jorhat, the

entire inquiry was conducted there, and the order of disciplinary authority was also passed at that place. The appellate order was passed by the DIG, CISF at Calcutta where the appeal was preferred and considered, the revision was also preferred at Calcutta and the order rejecting the petition was passed there. This being the factual matrix, the entire cause of action was beyond the territorial jurisdiction of this Court.

Learned Senior Counsel appearing for the petitioner has submitted that this Court has jurisdiction for the reason that the revisional order Annexure-PJ was served on the petitioner in Himachal Pradesh which fact has been alleged by him in paragraph-22 of the petition, the appeal was preferred by the petitioner from his native village in District Una and the appellate order was also conveyed to him there. Learned counsel also submits that on a prior occasion, ***Civil Writ Petition No.725 of 2000*** was entertained by this Court and therefore, this Court has jurisdiction to try the matter. The writ petition was also preferred from Una and the order rejecting the revision conveyed to him at his native village. These facts, according to the learned counsel appearing for the petitioner, constituted to confer jurisdiction on this Court to try the petition.

Since the petition is being disposed of on a preliminary point, I have not touched any of the submissions made by the learned counsel relating to the merits and the substantive aspects of the case. Learned

counsel for the petitioner has submitted that the inquiry as well as the subsequent proceedings was conducted in gross violation of the principles of natural justice. Learned counsel appearing for the respondents has argued that the petitioner had participated in the inquiry and that the case against him had been proved. He refused to cross-examine the witnesses and in any event, the documents and evidence on the record was sufficient to prove his gross misconduct. I am not discussing these aspects as the preliminary objection regarding jurisdiction is being decided.

It is undisputed that the alleged act of indiscipline, drawing up and service of the memorandum of charges, the holding of the inquiry, recording of the evidence etc. and the passing of the order of dismissal was at Jorhat in Assam. The appeal and revision were decided at Calcutta. Merely sending the appeal or revision from State of Himachal Pradesh against all the orders is not a ground which could grant territorial jurisdiction to this Court to decide the case. Learned counsel for the petitioner has submitted that since ***CWP No.725 of 2000*** filed by the petitioner was entertained by this Court, therefore, the question of non-suiting the petitioner does not arise. The record of the writ petition shows that it was decided on the first date of hearing without any reply being filed by the respondents and the judgment confines itself only on the point of alternate remedy. The question of jurisdiction was

neither raised nor decided. I am unable to accept the contention of the learned counsel for the petitioner.

Learned counsel for the respondents has drawn my attention to four decisions namely*;* ***Ramesh Gupta & Others*** *vs.* ***Indian Oil Corporation and Others 2003(2) Shim.L.C. 143,*** *decided by a Division Bench of this Court,* ***Brig.Malkiyat Singh Dullat vs. Union of India and others 1997(2) Sim..L.C., 72*** *again another Division Bench judgment of this Court,* ***Tibetan Administration's Welfare society*** *vs.* ***Union of India & Others Latest HLJ 2001(HP) 104(D.B.),***and ***State of Rajasthan and Others*** *vs.* ***M/s.Swaika Properties and Another (1985)3 SCC 217*** in support of her contention that the petition was not maintainable in Himachal as this Court has no territorial jurisdiction.

In ***Brig.Malkiyat Singh Dullat's*** case, the petitioner had challenged the rejection of a statutory complaint filed by him against his non-selection for promotion to the rank of Major General and had filed a non-statutory complaint against his Annual Confidential Reports. These were rejected by the Army Authorities. A writ petition challenging the orders of rejection was filed in this Court. It was opposed on the ground that this Court lacked territorial jurisdiction as no part of the cause of action had arisen within the territory of Himachal Pradesh. The stand of the petitioner was that the order of rejection of the statutory complaint against non-selection was conveyed to him in Shimla, the selection list came to the knowledge of the petitioner in Shimla and

the letter conveying that the petitioner had not been selected to the rank of Major General by the Review Selection Board was also received in Shimla. In these circumstances, it was submitted that this Court had jurisdiction to try the matter. This Court while considering the law in detail, held that these facts did not constitute a part of the cause of action and the writ petition was dismissed.

Similarly in ***Tibetan Administration's Welfare society's*** case, the petitioner therein had approached this Court challenging the orders issued by the Assistant Regional Provident Fund Commissioner, Siliguri (West Bengal) and Regional Provident Fund Commissioner, Regional Office, Shimla. While considering the respective submissions of the parties, this Court held that no part of the cause of action had arisen within the territorial jurisdiction of this Court. The submissions that the orders/communications/notices issued by the office of the Regional Provident Fund Commissioner, Sub Regional Office, Siliguri did not constitute such acts as would confer territorial jurisdiction to this Court. It was held:-

> *"**28.** In the case on hand, in our considered opinion, no part of cause of action can be said to have arisen within the local limits of this court by reasons of location of the head office of the Trust or registration of Trust or receiving copies of notices/orders/communications at*

> *Dharamshala. All actions challenged in the present petition by the petitioner were taken by the respondent No.2 from Siliguri, not within the jurisdiction of this Court, Similarly, the action sought to be taken against the party i.e. Hotel Tibet at Gangtok, is also not within the territorial jurisdiction of this Court. To us, it is more than clear that the head office, or registered office of the petitioner is hardly material so far as territorial jurisdiction of the court is concerned. We, therefore, hold that this Court has no territorial jurisdiction over the matter and on that ground alone, the writ petition deserves to be dismissed".*

Similarly, in ***Ramesh Gupta's case***, the dispute between the parties was regarding bids invited by four National Oil Companies for transportation of liquefied Petroleum Gas and Petroleum Products etc. This Court held that the mere fact that some of the contracts after execution had to be performed in the State of Himachal Pradesh or that the oil was to be stored in and transported from various places in Himachal was not a ground which would confer territorial jurisdiction on this Court.

Learned counsel for the petitioner has also submitted by placing reliance on ***State of Rajasthan and Others*** *vs.* ***M/s.Swaika Properties and Another (1985)3 SCC 217*** *(supra)*, that the service of a notice under a

statutory act, on a party at its registered office within the territorial jurisdiction of a State cannot give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action.

Learned counsel for the petitioners has placed reliance on the judgments of the Hon'ble Supreme Court in ***Dinesh Chandra Gahtori*** *vs.* ***Chief of Army Staff and Another (2001)9 SCC 525*** and ***Navinchandra N.Majithia*** *vs.* ***State of Maharashtra and Others (2000)7 SCC 640.*** Both these judgments have been considered and followed by this Court in ***Ramesh Gupta's case.***

Learned counsel has also urged that the Hon'ble Supreme Court in ***Om Prakash Srivastava*** *vs.* ***Union of India and Another (2006)6 SCC 207*** it has been held that the High Court will have jurisdiction if the cause of action wholly or partly arises within the territorial jurisdiction of the Court. Their Lordships have held that a question as to whether such cause of action arises wholly or partly has to be decided in the light of the nature and character of the proceedings under Article 226. For this, the writ petitioner has to establish that a legal right claimed by him has prima facie been infringed or is threatened to be infringed by respondent within the territorial limits of the Court's jurisdiction. While disposing of the petition, the Hon'ble High Court of Delhi had not dealt with the question as to whether it has jurisdiction to deal with the writ petition. Their Lordships observed:-

"***18.*** *In the instant case the High Court has not dealt with the question as to whether it had jurisdiction to deal with the writ petition. It only observed that the Delhi High Court may have jurisdiction, but the issues relating to conditions of prisoners in the State of U.P. can be more effectively dealt with by the Allahabad High Court. As noted supra, there were two grievances by the appellant. But only one of them i.e. the alleged lack of medical facilities has been referred to by the High Court. It was open to the Delhi High Court to say that no part of the cause of action arose within the territorial jurisdiction of the Delhi High Court. The High Court in the impugned order does not say so. On the contrary, it says that jurisdiction may be there, but the Allahabad High Court can deal with the matter more effectively. That is certainly not a correct way to deal with the writ petition. Accordingly, we set aside the impugned order of the High Court and remit the matter to it for fresh hearing on merits. A prayer has been made for release of the appellant on parole for the reasons indicated in the application. We are not inclined to pass any order on the said application. The same is rejected."*

As I have held, that mere receipt of orders/communications informing the petitioner that his case had been rejected, would not be a fact which would confer jurisdiction on this Court to adjudicate the matter. The pleadings show that barring the receipt of the appellate and revisional orders and sending of the appeal and the revision petition at Shimla, no act has been performed in Shimla. The rights of the petitioner about which he complains that there has been an infringement which has occurred either in Johrat or in Calcutta where the alleged act of indiscipline was committed, the entire inquiry was conducted and the punishment imposed and where the appeal and the revision were decided. Applying the principles laid down by the Hon'ble Supreme Court and this Court I hold that this Court has no jurisdiction to try the matter.

In the facts and circumstances of the case, the writ petition is dismissed. The petitioner will be at liberty to pursue his remedy in accordance with law. No observation has been made in this petition regarding the merits of the case of either side. There shall be no order as to costs.

**April 3, 2007** **(Dev Darshan Sud)**
**(aks)** **Judge.**